

CERTIFICATE OF MAILING

I hereby certify that this paper or fee is being transmitted on 12 March 2002 by facsimile to Christina Tartera Donnell, Esq. and is being transmitted to facsimile number 703.308.6916.



Judy Jarecki-Black, Ph.D., J.D.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Docket No:	AVI 007
Jeffrey C. Rapp)		
)		
Serial No: 09/877,374	)	Art Unit:	1632
)		
Filing Date: June 08, 2001)		
)		
Title: "Production of a Monoclonal	)	ATTN: Christina Tartera Donnell, Esq.	
Antibody by a Transgenic Chicken"	)	Fax No: 703.308.6916	

Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

FAX RECEIVED

MAR 12 2002

Sir:

PETITIONS OFFICE

PETITION FOR RECONSIDERATION UNDER 37 C.F.R. 1.10(d)

The Petitioner, and his attorney of record, wish to thank Ms. Donnell for her helpful comments during the telephone conversation following receipt of the Decision Dismissing Petition in the above-captioned matter, mailed 28 Jan 2002. Applicant respectfully requests reconsideration of the Petition to Correct Filing Date, mailed 14 August 2001, in view of the following:

The above-captioned Application, and associated filing papers, were deposited in the Federal Express Box in the Olympic Street Post Office, Athens, Georgia on Friday, 08 June 2001, in advance of the last pick-up for that day, as evidenced by a copy of the Certificate of Mailing accompanying the Application papers, submitted previously to the Examiner, and a copy of the applicable page from the Express Mail L g, attached hereto.

Attached to this Petition, please find the following provided for the Examiner's consideration:

- Copy of the original Express Mail Log showing deposit of the above-captioned Application and associated paperwork on 08 June 2001 at 4:42 PM;
- Affidavit from Applicant's attorney attesting to Express Mail deposit;
- Copy of Decision Dismissing Petition mailed 28 Jan 2002

Petitioner respectfully requests reconsideration of the Petition to Correct Filing Date. Should the Office have any questions regarding this request, the Office is invited to telephone the undersigned attorney.

If any fee or extension of time is required to obtain a corrected filing receipt, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 501729 for any such fee not submitted herewith.

Respectfully submitted,



Judy C. Jarecki-Black, Ph.D., J.D.
Registration No. 44,170

AviGenics, inc.
111 Riverbend Drive
Athens, Georgia 30605
(706) 227-1170 ext. 232
(706) 227-2180 (facsimile)

EXPRESS MAIL LOG

AviGenics, inc.
Concepts Book
Serial Number 009

Jared Black
By Wang

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MAR 12 2002

Docket No	Title	Inventor	Express Label No	Deposit date	Deposit time
AJH001	High Throughput Screening	Huang	EP254699087 US	13 Jan 01	10:07 AM
AUI002P	Human ab in avian cells	Ropp	EP254699630 US	02 Feb 01	4:00 PM
AUI003P	Probes for Microarraying (Provisional app)	Christmann	EP254699056 US	13 Feb 01	4:15 PM
AUI004	IMPROVED WINDOWING	Andacht	EK42178392US	14 Feb 01	1:45 PM
AUI005	MAGE NASHI Gene App, due to PDA, ASIS	Ivanic	EP254699042 US	20 Feb 01	4:30 PM
AUI01P	Lysosome Promoter Pro app	Ropp	EL846228546 US	30 Mar 01	4:15 PM
AJH001	High Throughput Screening IDS, 1449 *M/S	Huang	EL846226585 US	16 Apr 01	4:00 PM
AUI004	IMPROV. WINDOWING IDS, 1449 *M/S	Andacht	EL846226594 US	16 Apr 01	4:05 PM
AUI007	MAGE by T. Chaden app, due to PDA, ASIS	Ropp	EL846227475 US	08 June 01	4:42 PM
AUI006	MAGE NASHI Rop core app, PDA and Pat. to correct filing receipt, IDS, 1449 *M/S	Ivanic	EL846227453	21 June 01	2:10 PM

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Judy Jarecki-Black, Ph.D., J.D.

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	)	Docket No:	AVI 007
Jeffrey C. Rapp)		
Serial No:	)	Art Unit:	1632
09/877,374)		
Filing Date:)		
June 08, 2001)		
Title: "Production of a Monoclonal	)	ATTN: Christina Tartera Donnell, Esq.	
Antibody by a Transgenic Chicken")	Fax No: 703.308.6916	

Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

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MAR 12 2002

PETITIONS OFFICE

Sir:

AFFIDAVIT ACCOMPANYING PETITION FOR RECONSIDERATION
UNDER 37 C.F.R. 1.10(d)

I, Judy Jarecki-Black, am a registered patent attorney and serve as counsel for AviGenics, Inc., located at 111 Riverbend Road, Athens, Georgia 30605 and, as such, have first hand knowledge of all of the facts presented in this affidavit.

All patent applications at AviGenics are handled under my direction and filed with the USPTO using Express Mail service.

In conjunction with patent office filings, I maintain an Express Mail Log which records the Docket Number; Title; Inventor; Express Mail Label No.; Deposit Date and Deposit Time for all articles submitted to the USPTO using Express Mail. Beginning with entries made on 06 February 2002, the initials of the person making the deposit in the Express Mail box were also recorded. Before that date, the deposits were made only by me.

The deposits are made at the Express Mail Box located at the U.S. Post Office facility on Olympic Drive in Athens, Georgia. Because AviGenics has a corporate account, our normal and customary practice is to deposit the items in the Express Box


located in the parking lot. The last scheduled pick-up from that box is 6PM Monday through Friday, as is stated on the outside of the box.

My routine and customary practice is to deposit the filing in the Express Mail Box before the last scheduled pick-up and then enter the time and date of deposit, the Express Mail Label No., the docket number, title, and inventor in the Express Mail Log the next business day.

I deposited the Patent Application captioned above, accompanied by a combined declaration/Power of Attorney and Assignment in the Olympic Avenue Express Mail box at 4:42 PM on 08 June and noted that information in my Express Mail log according to my routine and customary practice. A copy of the appropriate page from my Log is attached.

I attest that the preceding statements are true to the best of my knowledge and belief.

Respectfully submitted,



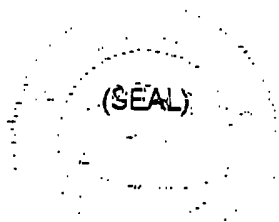
Date: 12 March 2002

Judy C. Jarecki-Black, Ph.D., J.D.
Registration No. 44,170

AviGenics, inc.
111 Riverbend Drive
Athens, Georgia 30605
(706) 227-1170 ext. 232
(706) 227-2180 (facsimile)
Date: 08 June 2001

STATE OF: Georgia)
COUNTY OF: Greene) SS

On this 12 day of March 2002, before me, a notary public, came Judy Jarecki-Black known to me to be the individual described in and who executed the foregoing assignment, and he duly acknowledged the same to be her free act and deed.



Lynn Wray, NOTARY PUBLIC

My Commission Expires: 1/17/2004

7

AVIGENICS, INC
GEORGIA BIOBUSINESS CENTER
111 RIVERBEND ROAD
ATHENS, GA 30605

FACSIMILE TRANSMITTAL SHEET

TO: CHRISTINA DONNELL

FROM: JUDY JARECKI-BLACK

COMPANY: USPTO OFFICE OF
PETITIONS

DATE: 12 MARCH 2002

FAX NUMBER: 703.308.6916

TOTAL NO. OF PAGES INCLUDING COVER: 9

PHONE NUMBER: 703.306.5589

SENDER'S FAX NUMBER: 706-227-2180

RE: PETITION FOR RECONSIDERATION

SENDER'S PHONE NUMBER: 706-227-1170 X 232

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

The telecopy transmission contains confidential information belonging to AviGenics, inc. and is intended solely for the recipient named below. AviGenics, inc. hereby expressly preserves and asserts all privileges and immunities applicable to this transmission. If you are not either the intended recipient or an agent or employee of the intended recipient, this transmission was sent to you in error. Any review, examination, use, disclosure, reproduction or distribution of this transmission or the information herein stated by anyone other than the intended recipient is STRICTLY PROHIBITED. If you have received this transmission in error, please read no further than the cover sheet and immediately telephone the sender to arrange for the return of this transmission to AviGenics, inc., which will bear all costs of return. Thank you.

Please see attached and call me at 706-227-1170 x232 if I can provide additional assistance. I will NOT be filing this Petition by mail unless you direct me otherwise. Thank you for your assistance.

FAX RECEIVED

MAR 12 2002

PETITIONS OFFICE



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

Paper No. 6

Judy Jarecki-Black
AVIGENICS, INC.
425 River Road
Athens, GA 30602-2771

FAX RECEIVED

MAR 12 2002

COPY MAILED

JAN 28 2002

OFFICE OF PETITIONS

In re Application of
Jeffrey C. Rapp
Application No. 09/877,374
Filed: June 10, 2001
Attorney Docket No. AVI-007

PETITIONS OFFICE

:
:
: DECISION DISMISSING
: PETITION
:

This is a decision on the request for reconsideration filed January 22, 2002, again requesting that the above-identified application be accorded a filing date of June 8, 2001, rather than the presently accorded filing date of June 10, 2001.

Petitioner again request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on June 8, 2001. Petitioner acknowledges that the date of deposit in Express Mail shown on petitioner's Express Mail receipt is June 10, 2001, but argues that the application was actually deposited with the United States Postal Service (USPS) on June 8, 2001.

In the petition filed August 14, 2001, petitioner asserted that the filing date was erroneously recorded as evidenced by the Certificate of Express Mail on the Transmittal sheet filed with the original application papers. Petitioner failed to provide the Office with a true copy of the Express Mail Label with the petition.

In the decision of November 16, 2001, the petition was dismissed. The Office noted that petitioner had not provided any direct evidence of the delivery of the above-identified application to the USPS on June 8, 2001. The decision further stated absent a true copy of the "Express Mail" mailing label or other evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail" service, which corroborates the allegation that the application was, in fact, deposited with the USPS on June 8, 2001, before the last scheduled pickup for that day, the application would be accorded the date indicated in the Express Mail Database as the date the application was accepted by the USPS (June 10, 2001).

In the present request for reconsideration, Judy C. Jarecki-Black, attorney of record, asserted:

The above-captioned Application, and associated filing papers, were deposited in the Federal Express Box in the Olympic Street Post Office, Athens, Georgia at 4:42 PM on Friday, 08 June 2001, as indicated on the Certificate of Express Mailing accompanying the filing. The last pickup for Express Mail at the Olympic Street Post Office is designated on the box as 6PM. All mail, express or

otherwise, is transferred to Atlanta from Athens for processing. Apparently, Athens personnel failed to time and date stamp the Application mailing before transferring it to the Atlanta AMC for delivery. As a result, the Express Mail label was stamped in Atlanta on Sunday, 10 June 2001 at 3:01AM.

Petition dated 01/22/02, p. 1-2.

In support of the petition, Dr. Jarecki-Black submitted a copy of Express Mail Label EL 846227475 US and a letter to Dr. Jarecki-Black from Athens Postmaster Deborah Phillips.

In the letter of Postmaster Phillips, she indicated:

Dr. Judy Jarecki-Black states that she placed Express Mail item #EL846227475US in the Express mailbox at the Olympic Drive office on June 8, 2001, but the mail-piece was not scanned accepted until 03:00 a.m. on June 10, 2001 at the Atlanta AMC 30320.

Based on the statement of Dr. Jarecki-Black of date and time of mailing, it appears that the mail-piece was dispatched from the Athens post office without being scanned into the system. The mail-piece was then scanned as accepted when found in the mail stream at the Atlanta AMC.

Letter from Deborah J. Phillips, dated 11/29/01 (Emphasis added).

Unfortunately, the letter from the Postmaster fails to corroborate the allegation that the Express Mail package was deposited with the USPS on June 8, 2001. See 37 CFR 1.10(d)(3). It is not evident from the letter of November 29, 2001, whether Postmaster Phillips had firsthand knowledge of the events of June 8, 2001, to establish to the satisfaction of the Commissioner that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Rather, it appears that Postmaster Phillips' knowledge of the events was based on the statements of Dr. Jarecki-Black.

Accordingly, the petition is dismissed.

Any request for reconsideration must be filed within TWO (2) MONTHS of the date of this decision in order to be considered timely. See 37 CFR 1.181(f).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 South Clark Place
Arlington, VA 22202

This file is being forwarded to Technology Center 1600 for examination in due course with the presently accorded filing date of June 10, 2001.

Telephone inquiries regarding this matter should be directed to the undersigned at (703) 306-5589.

Christina Tartera Donnell
Christina Tartera Donnell
Petitions Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

03 308 6916

*** RX REPORT ***

RECEPTION OK

TX/RX NO	5143
CONNECTION TEL	7062272180
CONNECTION ID	
START TIME	03/12(TU)15:48
USAGE TIME	03'26"
PGS.	9
RESULT	OK